

Meris Powell

— Why copy Note: Wf manuscript
Twin? was Conf.
— How copies twin? (not S or O)

was I breaking laws?
promises?
laws?

ANALYSIS: Dan's comments on crimes committed

Earliest period. 1940
-50

As reflected in his public statements, especially the ^{Ohio} ones most closely following the 1st indictment, Dan indicates ^{speech} that during the time of the xeroxing and the dissemination of the Papers, he felt that he was "probably violating a law"; that he was definitely violating "security regulations", "secrecy regulations", and "the information practices of the Department of Defense".

He acknowledges on several occasions that he knew the security regulations well. Furthermore, he states that he definitely broke the security regulations of the Rand Corporation. He took it for granted, he says, that there was a statute underlying the classification system: that therefore he was "probably violating a law" and would go to prison. On numerous occasions, Dan talks about his assumption that he would go to prison, and states that he was "willing to take the risk of being punished unjustly." He talks about the xeroxing, et. al. as being an act of conscience, of non-violent civil disobedience.

With the following exception* Dan never specifies any statute which at the time of the xeroxing and dissemination he thought he was breaking. He just nebulously refers to the idea that he thought he was violating a law - some unspecified law. He does admit to violating regulations. The assumption from the statements is that Dan, until Leonard enlightened him, assumed that 10501 was a law - this is probably the law that he thought he was violating.

*EXCEPTION: "I must say I thought of it at that time
as an act of non-violent civil disobedience

because I had, ah, been often told as an executive official that to give any information unauthorized to anyone else, to any unauthorized person, did violate the Espionage Act."

Another theme that runs through his statements is Dan's feeling that his sacrificing some years of his life to go to prison is far outweighed by the sacrificed lives in Southeast Asia. That the least he can do is attempt to end the war by making a sacrifice also.

Tony does not even discuss breaking laws, etc. as Dan did - I assume that he was aware of the debate over the constitutionality of the indictment (laws mentioned in indictment) by the time he was indicted. He just admits to things like xeroxing the papers.

EXAMPLES OF DAN'S ADMISSIONS

All these actions were clearly in contradiction with security regulations, secrecy regulations, and even more the information practices of the Department of Defense. Nevertheless, I felt that as an American citizen, a responsible citizen, I could no longer cooperate in concealing this information from the American public.

Each person who had had knowledge of that, had in effect, faced the choice day by day over those 25 years as to whether the secrecy regulations of the Department of Defense which I know very well, and I have been a professional for the last 12 years, should override the day last month, and next month, the need and the right of the public to have that kind of information...

Until recently, I took it for granted that I would go to prison. Somewhat to my surprise it turns out it's not at all clear that I have violated the law.

(Gandhi, Martin Luther King, Thoreau) They said if there's an unjust law, one that is really a moral obligation of a free citizen to disobey, he should be willing to accept the risk that the legal system will unjustly, as they would see it, punish him. And I am willing to take that risk.

There's no question that if I had done what I did in England, I would be guilty and there would be no use for pleading not guilty because they have an Official Secrets Act.

..I was doing something that could well lead the government to try to prosecute me and try to put me away for a long time.

Povich: Do you think that you broke a certain security regulation
(inaudible)

Ellsberg: Definitely.

There is no question at all that I broke the security regulations, secrecy regulations of the Department of Defense of which I was no longer an employee of and at the Rand Corporation. Neither of those have the force of law. The secrecy system in the Department of Defense, and I might say I didn't, wasn't current on this two years ago, but depends on Executive Order 10501 issued by President Eisenhower.

It turned out that there was no law that I had broken in terms of any previous interpretation of law. I wasn't clear on that as a layman while I was doing the xeroxing, but...

Ten years in prison is very cheap if that would contribute to ending this war.

I did this clearly at my own jeopardy, and I am prepared to answer all the consequences.

(Re Rosa Parks) If it weren't for your example I wouldn't be where I am today - on my way to jail.

And when an official or someone whose experience and his life course has given some degree of power or access asks himself the question what could I do to end this war if I were willing to go to jail for a long time, he will suddenly discover a lot of power and freedom that he didn't know he had before..

I did expect that the result of this would be going to prison for a very long time, perhaps the rest of my life.

I guess ten years in prison obviously is trouble, but it's not the loss of limb or the loss of life which is a risk and sacrifice that we take for granted when we send our brothers and sons off to fight in a foreign land.

I know myself that I was not at all eager at any point to go to prison. The possibility of prison certainly affected the timing of various of my decisions, not initially, in the fall of '69 but as time wore on it affected decisions of mine whether to leave the avenue of congressional revelations, which I thought was the most appropriate channel and go to others that involved a higher certainty of prison.

That put it to me the standard, that was a high one, made it obvious that I had to do what had to be done to end the war even if it did mean sacrificing freedom, which would be no greater risk or sacrifice than the men in Vietnam were facing or that we were imposing on the people, all the people of Indochina, and had been imposing for 25 years. So that made the decision very easy.